

DECISION MEMORANDUM

**TO: COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSIONER KEMPTON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: SCOTT WOODBURY
DEPUTY ATTORNEY GENERAL**

DATE: DECEMBER 17, 2008

**SUBJECT: CASE NO. GNR-E-08-03
PETITION TO OPEN INVESTIGATIVE DOCKET
RFP COMPETITIVE BIDDING GUIDELINES**

On November 26, 2008, the Northwest and Intermountain Power Producers Coalition (NIPPC), the Industrial Customers of Idaho Power (ICIP), the J.R. Simplot Company, and the Idaho Irrigation Pumpers Association, Inc. (IIPA), collectively Petitioners, filed a Petition with the Idaho Public Utilities Commission (Commission) asking the Commission to open a generic investigation into the desirability of establishing competitive bidding guidelines for the procurement of supply-side resources by Idaho Power, PacifiCorp and Avista.

Petitioners contend that electric utilities in Idaho are free to offer supply-side resource acquisition requests for proposals (RFPs) that are designed and administered completely without Commission or other stakeholder input. Integrated Resource Plans (IRPs), while useful tools in analyzing resource options, Petitioners contend, are generally silent on the method by which any particular resource should be acquired. The IRP process, Petitioners contend, does not provide a framework for oversight of the resource acquisition process. Electric utilities in Idaho, Petitioners state, are even free to make supply-side resource acquisition decisions without the benefit of RFPs. In the Pacific Northwest States of Washington and Oregon, Petitioners contend that the same utilities are required to make resource acquisitions through a Commission-approved, and stakeholder involved, process. Idaho, Petitioners contend, is the only State in the Pacific Northwest that does not actively oversee

or provide guidelines for the investor-owned utilities it regulates that govern their acquisition of supply-side resources.

The adoption of guidelines and active oversight of supply-side resource acquisition decisions, Petitioners contend, is increasingly the norm. Petitioners cite a July 2008 Report of NARUC/FERC entitled “Competitive Procurement of Retail Electric Supply: Recent Trends in State Policies and Utility Practices.” That Report concludes:

Competitive procurements for retail electricity supply have been used for many years in different states. More than forty percent of the states now rely on formal policies and rules for procurements, while regulators in many other states encourage use of competitive procurements by utilities in determining which resources to add to their mix of retail supply.

Where regulators have committed to relying upon competitive procurement approaches as a means to help identify the “best” resources needed to meet the needs of the utility’s customers, the process should be designed and implemented so that it reflects the following criteria (and is generally viewed as being consistent with them):

- Fair and objective;
- Designed to encourage robust competitive responses from market participants with creative responses from the market;
- Based on evaluations that incorporate all appropriate and relevant price and non-price factors;
- Efficient, with a timely selection process; and
- Supported by regulatory actions that positively reinforce the commission’s commitment.

The Report, Petitioners contend, is a blueprint on how to implement guidelines that are both fair and effective.

NIPPC contends that several of its members are actively participating in Idaho Power’s current RFP for new resources. All of NIPPC’s members, whether they are participating or not, it contends, have expressed serious concern regarding Idaho Power’s RFP design, timing and intent. They have concluded that the just-closed RFP resembles other recent Idaho Power solicitations, i.e., it favors the utility’s self-build option. The consequence of an under-subscribed RFP and/or one where the outcome is pre-ordained, Petitioners contend, deprives the ratepayers of access to the competitive marketplace. It also forecloses the opportunity of tapping into what may prove to be least cost – in economic and environmental terms – power generated by independent power producers

(IPPs). Petitioners contend that competitively procured power purchase agreements (PPAs) can shift tangible and considerable risk from ratepayers onto IPPs. The IPP business model, Petitioners state, is based on competition and the principle of pay for performance; it leverages the profit motive to consumers' advantage. Regardless of the current "need for action," the implementation of competitive procurement guidelines in Idaho, Petitioners contend, is consistent with good regulatory practice.

Petitioners request that the Commission open a docket for the purpose of exploring whether competitive RFPs should be required of Idaho Power, PacifiCorp and Avista. If the answer is in the affirmative, Petitioners contend that the docket should be used to explore reasonable parameters and rules governing the supply-side acquisition process through competitive procurement.

Staff has reviewed the Petition and believes that Petitioners have not established a prima facie case for opening an investigative docket. Petitioners provide anecdotal speculation only as to Idaho Power's RFP process and make no representations as to the Idaho RFPs conducted by PacifiCorp or Avista. Petitioners make no representations regarding participation of their members in the Idaho IRP processes of Avista, Idaho Power or PacifiCorp and whether attempts to address the RFP process, elements and perceived lack of transparency in those forums have been rebuffed by the utilities or Commission. Petitioners express no familiarity as to the regulatory opportunities for public input in Idaho on utility RFPs and selected resources. Petitioners make no representations or comparisons regarding the different competitive bidding guidelines and procurement approaches used in Washington, Oregon, Utah, Montana or Wyoming. No representations are made as to whether the competitive bidding guidelines adopted in those states are uniformly applied, comply or depart from the related recommendations of NARUC or result in acquisition of a lower cost and better resource. What we are provided with is some anecdotal speculation by NIPPC members about Idaho Power's recent and current RFP process being rigged to favor self-build options. Staff recommends that prior to any Commission determination to initiate an investigation that the Petitioners be required to supplement their Petition with supporting prefiled testimony.

COMMISSION DECISION

Petitioners have requested that the Commission open a generic investigation into the desirability of establishing competitive bidding guidelines for the procurement of supply-side resources by Idaho Power, Avista and PacifiCorp. Staff recommends that prior to any determination to initiate an investigation that the Petitioners be required to supplement their Petition with supporting prefiled testimony. Petitioners have agreed to file supporting testimony. Does the Commission find it reasonable to require the Petitioners in this case to file testimony in support of their Petition to initiate an investigation?

A handwritten signature in black ink, appearing to read "Scott Woodbury", written over a horizontal line.

Scott Woodbury
Deputy Attorney General

bls/M:GNR-E-08-03_sw